



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Warren McDonald
County Attorney
Smith County
Tyler, Texas

Dear Sir:

Opinion No. 0-2575

Re: Whether one of two candidates whose names appeared on the ballot in the first primary and who received a plurality of all votes cast, but not a majority by reason of a number of write-in votes for other candidates, may be declared nominated, or whether a run-off election is necessary where the County Executive Committee has provided for nomination of county and precinct officers by a majority vote.

We have your letter of July 29, 1940, requesting our opinion on the following question:

"Where in the first Democratic election, A, a candidate for Justice of the Peace, received one vote more than B, the only other candidate for said office printed on the ballot, but C, whose name was not printed on the ballot, received two votes as a "write in" candidate, is it necessary for A and B to have a run-off election?"

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You state in your letter that the County Executive Committee, prior to the first primary, has provided for nomination for county and precinct officers by a majority vote in accordance with Article 3106, Revised Civil Statutes, 1925, which provides that,

"The County Executive Committee shall decide whether the nomination of County Officers shall be by majority or plurality vote, and, if by a majority vote, the Committee shall call as many elections as may be necessary to make such nomination . . ."

The San Antonio Court of Civil Appeals in the case of Wagner vs. Yates 119 S. W. (2d) 175, in construing this statute declared:

"It is clear that where the Executive Committee, at the proper time and prior to the first primary, provides for the nomination of county and precinct officers by majority vote (Art. 1306, R. S. 1925), no person can be declared to be the nominee of his party for a county or precinct office unless that person receives a majority of the votes in the first primary."

The cases of Dunagan vs. Jones, 76 S. W. (2d) 219, and Cunningham vs. McDermott, 277 S. W. 218, very clearly establish the principle that write-in votes for candidates whose names do not appear on the official ballot are of equal dignity with votes for candidates whose names were printed on the ballot in the first primary or general election.

Applying the rules announced in the foregoing cases to the fact situation presented in your request, we are of the opinion that it will be necessary to hold a run-off election to select the democratic nominee for the office of Justice of the Peace, inasmuch as no candidate for said office received a majority at the general primary election.

We wish to express our sincere appreciation for the excellent brief submitted by you with your request, which

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has been of material assistance to us.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED AUG 3, 1940

George R. Sullivan

FIRST ASSISTANT
ATTORNEY GENERAL

BY

Walter R. Koch

Walter R. Koch
Assistant

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OPINION
COMMITTEE